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7 IN THE UNITED STATES DISTRICT COURT  
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9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 CORNELIUS LOPES,

No. C-08-4433 MMC

12 Plaintiff ,

**ORDER DISMISSING PLAINTIFF'S  
COMPLAINT WITH LEAVE TO AMEND**

13 v.

14 CITY OF LIVERMORE, et al.,

15 Defendants.

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17 Before the Court are plaintiff's complaint and application to proceed in forma  
18 pauperis, both filed September 23, 2008. When a party seeks to proceed in forma  
19 pauperis, the district court is required to dismiss the case if the court determines the  
20 complaint fails to state a claim upon which relief can be granted. See 28 U.S.C. §  
21 1915(e)(2)(B)(ii).

22 Here, plaintiff's complaint fails to allege his constitutional rights were violated  
23 pursuant to an official policy, practice, or custom of defendants, and, consequently, the  
24 complaint fails to state a claim. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690  
25 (1978); *Christie v. lopa*, 176 F.3d 1231, 1235 (9th Cir. 1999) ("Congress intended to hold  
26 municipalities liable only when 'action pursuant to official municipal policy of some nature  
27 caused a constitutional tort.'") (quoting *Monell*, 436 U.S. at 691).

28 Accordingly, plaintiff's complaint is hereby DISMISSED, with leave to file, no later

1 than October 31, 2008, a First Amended Complaint curing the deficiencies noted. If plaintiff  
2 does not file a First Amended Complaint by the required date, the Court will dismiss the  
3 action.

4 The Court will defer ruling on plaintiff's application to proceed in forma pauperis  
5 pending plaintiff's filing of a First Amended Complaint, if any.

6 **IT IS SO ORDERED.**

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8 Dated: September 29, 2008

  
MAXINE M. CHESNEY  
United States District Judge

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